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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 479

GRAND TRUNK WESTERN RAILROAD COMPANY,
Petitioner,

vs.

LEWIS W. JAMES, Administrator of the Estate of Colin Kahl, Deceased,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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JURISDICTION.

Nowhere in its Petition for Certiorari does Petitioner apprise this Court of the fundamental facts which motivated and justified the Illinois Court in issuing the injunction in question.

Lois Kahl, as Administratrix of her deceased husband's estate, filed suit against Petitioner in the Superior Court of Cook County, Illinois. Petitioner was duly served with process in that action, its attorneys entered an appearance on its behalf, and the Illinois court was thus vested with jurisdiction over the parties and the subject matter.

Despite the fact that this cause was already pending in Illinois, Petitioner filed a suit against the Administratrix, and without notice obtained an order enjoining her from prosecuting the prior action pending in Illinois. It undertook to oust the Illinois court of the previously acquired jurisdiction through the injunctive processes of a Michigan court.

This case presents the simple proposition of whether a State court having first obtained jurisdiction over the subject matter and the parties can have that jurisdiction defeated by an injunctive order obtained in a court of some other State.

It is nothing new or novel. It has been universally held by this and other courts that neither the full faith and credit clause nor rules of comity require compulsory recognition of injunctions so as to abate or preclude the disposition of pending cases.

The counter injunction was issued by the Illinois court restraining the Petitioner from enforcing the Michigan injunction and thus divesting the Illinois court of jurisdiction, since Petitioner had persisted in a course of conduct calculated to defeat the Illinois Court of its prior jurisdiction.

Notwithstanding an injunctive order entered by the Supreme Court of Illinois while the appeal was pending, Petitioner arrested plaintiff, its local attorney, who was also county prosecutor, sought to have her abandon the appeal, had her removed as Administratrix, had appointed in her stead an eighty-three year old Bailiff, and engaged on behalf of the Bailiff, as Administrator of the Estate, a lawyer to prosecute the claim in Cass County, Michigan, wherein Petitioner's same local attorney entered his appearance.

The conduct of the Illinois court is in accord with many fundamental principles, and the Petition presents no new constitutional question. Moreover, under the order of the Supreme Court, the only effect is that the Petitioner is required to defend the case in the court where it was originally pending.

QUESTION PRESENTED.

The statement of "Question Presented" in Petitioner's brief (p. 3) does not correctly reflect the issue inyolved. In fairness, it should be stated thus:

> Where a Court has obtained prior jurisdiction of the subject matter and parties, must it, under the full faith and credit and due process clauses of the Federal Constitution, recognize an injunctive order subsequently obtained in another State court so that it will be ousted of jurisdiction of the cause?

STATEMENT.

This proceeding involves no new issue. Specifically, it is a case where an Illinois court obtained jurisdiction of the parties and the subject matter prior to a suit instituted by Petitioner in Michigan. There Petitioner obtained an *ex parte* injunction prohibiting the plaintiff from prosecuting the cause of action then pending in Illinois. To protect its jurisdiction in accord with the inherent power of courts, the Illinois court issued an injunction whereby Petitioner was enjoined from proceeding in other courts.

On February 16, 1956, Lois Kahl, Administratrix of her deceased husband's estate, filed suit against Petitioner in the Superior Court of Cook County, Illinois, under the Michigan wrongful death statute. Service was had upon Petitioner on February 17, 1956.

Petitioner obtained a number of extensions of time to plead, and on March 6, 1956, before answering, it filed suit against Mrs. Kahl in Cass County, Michigan, and obtained a temporary injunction without notice, restraining her from prosecuting her action in the Superior Court of Illinois.

Mrs. Kahl thereupon amended her complaint in the original action in the Superior Court and did not, as the Petitioner would have the Court believe, file a new action. In the amendment she alleged that Petitioner had failed to question her right to proceed in the Superior Court of Illinois by appropriate motion in that Court; that she could not obtain a fair trial in Cass County, Michigan; that the Cass County, Michigan suit was instituted for the purpose of preventing her from obtaining a trial in the Illinois court, of obtaining an unconscionable and inequitable advantage over her, of unduly annoying and harassing her, and of ultimately forcing her into an unjust settlement of her cause of action. It was further alleged that Petitioner would continue to prosecute the Cass County action, and such prosecution would result in irreparable damage to the estate.

She moved for a temporary injunction on the basis of her amended complaint, but was unsuccessful in the trial and appellate courts.

She thereupon filed a Petition for Leave to Appeal to the Supreme Court of Illinois. While the Petition for Leave to Appeal was pending, she was arrested, pursuant to a body attachment obtained on the application of O'Connor, Petitioner's local attorney and also prosecuting attorney for Cass County, Michigan. She was compelled by him, under the threat of imprisonment, to write her Illinois attorney to dismiss the appeal.

Petitioner filed a second suit for an injunction against the Administratrix and obtained an order restraining her from further prosecution of her Illinois appeal.

Notwithstanding that the Illinois Supreme Court entered an order restraining Petitioner from taking any further action in Michigan until it had disposed of the appeal, O'Connor had Mrs. Kahl removed as Administratrix, had Greenawalt, an eighty-three year old Court Bailiff, appointed in her stead and he, although representing the railroad, arranged for a lawyer to represent the estate in the suit against the railroad filed in Michigan, wherein O'Connor promptly entered his appearance as Petitioner's attorney. Greenawalt was removed, and James substituted when the facts were brought to the attention of the Probate Court.

A counter-injunction was thus necessary to preserve the Illinois court's jurisdiction over the controversy.

REASONS FOR DENIAL OF WRIT.

1. There is no Federal question of substance not heretofore decided by this Court. Petitioner in its assertion that the Illinois Supreme Court "has fired the first shot in what promises to be, in the words of the Appellate Court, 'a preposterous duel of injunctions between the courts of Michigan and Illinois,'" has apparently been unconcerned with the fact that it attempted, through a writ of injunction obtained in a subsequent proceeding in a Michigan court, to control litigation already pending in the Illinois court, and that the Illinois court merely restrained the parties before it from interfering with its jurisdiction.

The Illinois court simply held: (1) an injunction obtained in a Michigan court in a suit filed subsequent

to that in Illinois wherein the Illinois court had jurisdiction of the parties and the subject matter could not defeat the Illinois court of its jurisdiction which it would retain until final judgment; and (2) that a court may issue an injunction in order to protect its jurisdiction against proceedings in other courts having as their purpose an attempt to defeat that jurisdiction.

It is the public policy of Illinois courts, recognized by repeated decisions, that the court first properly acquiring jurisdiction of an action should be permitted to continue with its disposition unhindered by subsequent actions of other courts. To this effect, see *Illinois Bell Telephone Co.* v. *Illinois Commerce Commission,* 414 Ill. 275; *Aquelino* v. *City of Waukegan,* 344 Ill. App. 204; *International Printing Pressmen* v. *Rebenson,* 350 Ill. App. 156; *Taylor* v. *Atchison, Topeka & Santa Fe Ry. Co.,* 292 Ill. App. 457; *Harris* v. *Pullman,* 84 Ill. 20; *Royal League* v. *Kavanagh,* 233 Ill. 175.

Indeed, it is consistent with that universally followed policy that a court which acquires jurisdiction will continue with the cause to a final conclusion.

To that effet, see the cases cited under paragraph 3 herein.

If the rule were otherwise, the administration of justice would be thrown into chaos through multiplicity of suits, with each litigant filing new suits in the forum most desirable to him.

2. The injunctive order issued by the Michigan court was not entitled to full faith and credit in Illinois. It is well established that neither the full faith and credit clause nor the rules of comity require a compulsory recognition of an injunction to abate a pending case.

(Restatement, Conflict of Laws, sec. 450, p. 534; 21 C.J.S. 860; 43 C.J.S. 503; *Taylor* v. *Atchison, Topeka and Santa Fe Railway Co.*, 292 Ill. App. 457; *Kleinschmidt* v. *Kleinschmidt*, 343 Ill. App. 539; *Alford* (*Lindsey*) v. *Wabash Railway Co.*, 229 Mo. App. 102, 61 S.W. 2d 369, and 73 S.W. 2d 277; *Union Pacific Railway Co.* v. *Rule*, 155 Minn. 302, 193 N.W. 161; *Kepner* v. *Cleveland, Cincinnati, Chicago and St. Louis Railway Co.*, 322 Mo. 299, 15 S.W. 2d 825, cert. denied 280 U.S. 564; *Frye* v. *Chicago, Rock Island and Pacific Railway Co.*, 157 Minn. 52, 195 N.W. 629, cert. denied 263 U.S. 723; *Leet* v. *Union Pacific Railway Co.*, 25 Cal. 2d 605, 144 P. 2d 64, subsequent opinion 155 P. 2d 42; *State ex rel. Bossung* v. *District Court*, 140 Minn. 494, 168 N.W. 589; *Peterson* v. *Chicago, Burlington and Quincy Railway Co.*, 187 Minn. 235, 244 N.W. 823; *Doyle* v. *Northern Pacific Railroad Co.*, 55 F. 2d 708.)

As the dissenting opinion in the Illinois Supreme Court pointed out:

> "So far as I have been able to ascertain, no court has as yet held that such an injunction is entitled to full faith and credit in the sense that the action toward which the injunction is directed must be abated." (*James* v. *Grand Trunk West. R. R. Co.*, 14 Ill. 2d 356, 373.)

Nor is the privileges and immunities clause of the Constitution in anywise involved. Illinois has accorded a Michigan citizen the same rights as an Illinois citizen.

3. Contrary to Petitioner's argument, it is a uniformly established principle that when a court has acquired jurisdiction, it may retain and protect that jurisdiction by injunctive process, if necessary, against litigants attempting to defeat its jurisdiction by proceedings in other courts.

This court and many others have uniformly sustained the principle that when a court has acquired jurisdiction it may retain and protect that jurisdiction by injunctive process if necessary, against litigants attempting to oust it of jurisdiction by proceedings in other courts. In *French* v. *Hay*, 89 U. S. 250, an injunction was issued in the Circuit Court of the United States to prevent a party from pursuing judicial proceedings in the State courts of Pennsylvania, it appearing that the federal suit was first filed. The court said, pp. 252, 253:

> "The court having jurisdiction *in personam* had power to require the defendant to do or refrain from doing anything beyond the limits of its territorial jurisdiction which it might have required to be done or omitted within the limits of such territory. Having the possession and jurisdiction of the case, that jurisdiction embraced everything in the case, and every question arising which could be determined in it until it reached its termination and the jurisdiction was exhausted. While the jurisdiction lasted, it was exclusive and could not be trenched upon by any other tribunal."

The *French* case was cited in *Dugas* v. *American Surety Co.*, 300 U.S. 414, 428-429, *Essanay Film Co.* v. *Kane*, 258 U.S. 358, 361, and *Hull* v. *Burr*, 234 U.S. 712, 723.

It is true that the issue in the foregoing cases arose where a Federal court enjoined prosecution of an action in a state court. The underlying principle is, however, identical. If a Federal court can so act to preserve and enforce its jurisdiction, no reason appears why the same power should be denied a state court.

In the case of *Looney* v. *Eastern Texas R.R. Co.*, 247 U.S. 214, this court said p. 221:

"The use of the writ of injunction, by federal courts first acquiring jurisdiction over the parties or the subject matter of a suit, for the purpose of protecting and preserving that jurisdiction until the object of the suit is accomplished and complete justice done between the parties, is familiar and long established practice. *Freeman* v. *Howe*, 24 How. 450; *Harkrader* v. *Wadley*, 172 U.S. 148, 163, 164."

In the same case the court went on to observe, p. 221:

"So important is it that unseemly conflict of authority between state and federal courts should be avoided by maintaining the jurisdiction of each free from the encroachments of the other, that Sec. 265 of the Judicial Code, Rev. Stats. sec. 720, effective March 2, 1793, see 22, 1 Stat. 334, has repeatedly been held not applicable to such an injunction. *Julian* v. *Central Trust Co.*, 193 U.S. 93 113; *Simon* v. *Southern Ry. Co.*, 236 U.S. 115."

In *C. M. & St. P. Ry. Co.* v. *Schendel*, 292 Fed. 326 (C.A. 8th) the court was likewise faced with the validity of an order entered by a Federal District Court in Minnesota directing the defendant to dismiss a suit to enjoin the witnesses in an action arising out of the wrongful death of an Iowa resident from testifying outside the State of Iowa. In sustaining the order the Court of Appeals noted that the decision of the Iowa court was based upon an anti-ambulance chasing statute. It held, however, that a Federal court should reject this statute since it conflicted with the public policy declared in the Federal Employers' Liability Act with respect to choice of forum. Similarly, in the instant case, the Michigan venue statute should be rejected since, as has been shown, it conflicts with the public policy of Illinois with respect to actions by non-resident plaintiffs.

disposing of the Iowa statute, the court in the *Kline* case held that the test actually was whether the Illinois court had first acquired jurisdiction and, if so, whether the state court action in Iowa would defeat that jurisdiction. If the latter were true, then the court could assert its process against the defendant railroad to prohibit it from proceeding in the other forum (Iowa in this case) to protect its own jurisdiction.

This is exactly what happened here. Illinois properly acquired jurisdiction over this cause prior to the institution of any action in Michigan. Manifestly, if the petitioner is held in contempt and prohibited from participating in the Illinois litigation, it will greatly hamper, as a matter of fact, prohibit that litigation. It therefore follows that the trial court had the power to award appropriate relief against the defendant in order to protect its jurisdiction.

This principle has been affirmed in various State courts, particularly in *Peterson* v. *Chicago, Burlington and Quincy Railway Co.*, 187 Minn. 235, 244 N.W. 823, in which the Minnesota court in which the previous action was pending ordered the defendant to dismiss its out-of-state injunction proceedings.

The only issue raised by Petitioner's Michigan action was whether Illinois was the lawful forum wherein to maintain the action, but whether the action could be prosecuted outside of Cass County, Michigan, without specific reference to Illinois, the State in which the case was then pending. This determination of the Michigan court was based upon a Michigan venue statute. But certainly a Michigan court could not determine the jurisdiction of an Illinois court. Moreover, to do so would be to give the Michigan venue statute an unconstitutional application in

this attempt to restrain a litigant from pursuing a transitory cause of action in another state.

To this effect see *Atchison, Topeka & Santa Fe Ry Co.* v. *Sowers*, 213 U.S. 55, and *Tennessee C. I. & R. Co.* v. *George*, 233 U.S. 354. In the latter case, this Court said that venue is no part of the right of the transitory cause of action, that a State could not create a transitory cause of action and at the same time destroy the right to sue in any court having jurisdiction, that jurisdiction being determined by the law of the court's creation and not by the extra-territorial operation of a statute of another State even though it created the right of action.

In the light of these decisions, it is obvious that the Michigan statute itself cannot be given an extra-territorial application, and it would seem to follow inevitably that a decree based on such an unconstitutional statute could be given no greater force or effect.

And the Illinois court could not refuse to entertain plaintiff's action on the ground that it was based on the wrongful death Act of a sister State. (*First National Bank of Chicago* v. *United Air Lines, Inc.*, 342 U.S. 396, 96 L. ed. 441; *Hughes* v. *Fetter*, 341 U.S. 609, 95 L. ed. 1212; *Miles* v. *Illinois Central Railroad Co.*, 315 U.S. 698, 703, 86 L. ed. 1129; 61 Yale L. J. 1206.) Moreover, it is the undisputed policy of Illinois to keep its courts open to residents and non-residents alike. (*Wintersteen* v. *National Cooperage and Woodenware Co.*, 361 Ill. 95; *Opp* v. *Pryor*, 294 Ill. 538.)

Nor does an Illinois court by its counter injunction set itself up as a super supreme court. It is merely acting in a realistic manner. Unless it issued a counter injunction, Petitioner could oust it of its jurisdiction through

such conduct as it indulged in while the appeal was pending in the Supreme Court, notwithstanding the order of that court.

CONCLUSION.

It therefore appears that no new or novel question is presented here. The issues are simple and involve questions of settled law. The petition should, therefore, be denied.

Respectfuuly submitted,

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